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4 DALLIN LLC,
5 Plaintiff,
6 v.
7 JOSEPHINE IIGA, et al.,
8 Defendants.

9 Case No.16-cv-06407-JSC

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**ORDER REASSIGNING CASE
AND REPORT &
RECOMMENDATION TO
REMAND**

24 Plaintiff brought this state-law unlawful detainer action against Defendant in the Superior
25 Court of California for the County of Contra Costa seeking to evict Defendants from real property
26 located in Oakland, California. Defendants Josephine Liga, Leonard Parham, and Susan Robinson,
27 representing themselves, removed the action to federal court. Given the lack of subject matter
28 jurisdiction appearing on the face of the Complaint, the Court ordered Defendants to show cause
("OSC") as to why this case should not be remanded. (Dkt. No. 7.) Although ordered to respond
to the OSC by November 23, 2016, Defendants have failed to do so.

Because Defendants have not yet filed a consent or declination to magistrate judge
jurisdiction, the Clerk of the Court is ordered to REASSIGN this action to a district court judge.
For the reasons explained below, this Court recommends that the case be REMANDED.

DISCUSSION

A defendant may remove an action from state court to federal court so long as the federal court has original jurisdiction. 28 U.S.C. § 1441(a). Federal subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) requires complete diversity of citizenship and an amount in controversy in excess of \$75,000. Federal subject matter jurisdiction under 28 U.S.C. § 1331 requires a civil action to arise under the constitution, laws, or treaties of the United States. A claim "arises

1 under” federal law only if a “well-pleaded complaint” alleges a cause of action based on federal
2 law—“an actual or anticipated defense” does not confer federal jurisdiction. *Vaden v. Discover*
3 *Bank*, 556 U.S. 49, 60 (2009). The defendant seeking removal “bears the burden of establishing
4 that removal is proper” and the “removal statute is strictly construed against removal
5 jurisdiction.” *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th
6 Cir. 2009). Further, when a case is removed to federal court, the court has an independent
7 obligation to satisfy itself that it has federal subject matter jurisdiction. *Valdez v. Allstate*
8 *Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). A case removed to federal court must be
9 remanded back to state court “if at any time before final judgment it appears that the district
10 court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c).

11 Here, Defendants base removal on federal question jurisdiction. However, the removed
12 complaint makes only a state-law claim for unlawful detainer. Defendants’ allegation that “federal
13 question exists here because Defendant’s Answer, a pleading[,] depends on the determination of
14 Defendant’s rights and Plaintiff’s duties under federal law” (see Dkt. No. 1 at 2) is of no moment
15 because federal jurisdiction exists only when a federal question is presented on the face of the
16 plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987)
17 (“[I]t is now settled law that a case may *not* be removed to federal court on the basis of a federal
18 defense[.]”) (emphasis in original); *see also U.S. Bank Nat’l Ass’n v. Terrenal*, No. 12–5540, 2013
19 WL 124355, at *2 (N.D. Cal. Jan. 8, 2013) (finding “no basis for asserting federal claim
20 jurisdiction” where “[t]he complaint asserts only one state law claim for unlawful detainer”).

21 Nor does it appear that the amount in controversy meets the jurisdictional threshold of
22 \$75,000.00 for diversity jurisdiction. 28 U.S.C. §§ 1441(b) & 1332(a). Further, only non-resident
23 defendants can effect removal based on diversity jurisdiction. *See* 28 U.S.C. § 1441(b); *Spencer v.*
24 *U.S. Dist. Ct. for Northern Dist. (Altec Indus., Inc.)*, 393 F.3d 86, 87 (9th Cir. 2004). Once any
25 “local defendant (a citizen of the forum state) has been served, the action cannot be removed by
26 that defendant, or by any other defendant.” *Republic W. Ins. Co. v. Int’l Ins. Co.*, 765 F. Supp.
27 628, 629 (N.D. Cal. 1991) (internal quotation marks omitted). Here, the civil cover sheet alleges
28 that Defendants reside in Alameda County and are therefore citizens of California. (Dkt. No. 1-1

1 at 1.) As Defendants are all “local,” removal is improper on this basis as well.

2 Following the Court’s OSC, Plaintiff filed a motion to remand and an ex parte application
3 to shorten time on the motion to remand. (Dkt. Nos. 8, 9.) Given Defendants’ failure to respond
4 to the OSC regarding remand and the clear lack of subject matter jurisdiction on the face of the
5 complaint, there is no need to wait for further briefing or oral argument on those motions. *See*
6 N.D. Cal. Civ. L.R. 7-1(b). Remand is required.

7 **CONCLUSION**

8 Based on the foregoing, this Court RECOMMENDS that the newly assigned district court
9 judge REMAND this action to Superior Court of California for the County of Contra Costa.

10 Any party may file objections to this report and recommendation with the district court
11 judge within fourteen days after being served with a copy. *See* 28 U.S.C. §636(b)(1)(B); Fed. R.
12 Civ. P. 72(b); Civil L.R. 72-3. Failure to file objections within the specified time may waive the
13 right to appeal the district court’s ultimate Order.

14 **IT IS SO ORDERED.**

15 Dated: December 5, 2016

United States District Court
Northern District of California

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17 JACQUELINE SCOTT CORLEY
18 United States Magistrate Judge
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12 **CERTIFICATE OF SERVICE**
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14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
15 District Court, Northern District of California.
16

17 That on December 5, 2016, I SERVED a true and correct copy(ies) of the attached, by
18 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
19 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
20 receptacle located in the Clerk's office.
21

22 Josephine Iiga
23 8208 Dowling Street
24 Oakland, CA 94605
25

26 Leonard Parham
27 8208 Dowling Street
28 Oakland, CA 94605
29

30 Susan Robinson
31 8208 Dowling Street
32 Oakland, CA 94605
33

34 Dated: December 5, 2016
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United States District Court
Northern District of California

1
2 Susan Y. Soong
3 Clerk, United States District Court
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5 By: 
6 Ada Means, Deputy Clerk to the
7 Honorable JACQUELINE SCOTT CORLEY
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